

STATE OF MICHIGAN



84TH DISTRICT COURT

MARY G. SORGER
COURT REPORTER

WEXFORD COUNTY

DAVID A. HOGG
DISTRICT JUDGE

BRENDA L. LEWIS
COURT ADMINISTRATOR/
MAGISTRATE

437 EAST DIVISION STREET
CADILLAC, MICHIGAN 49601
231-779-9515
FAX 231-779-5396

LORRAINE B. GREGG
ATTORNEY MAGISTRATE

April 17, 2008

Mr. Corbin R. Davis
Supreme Court Clerk
P. O. Box 30052
Lansing, MI 48909

Re: ADM File No. 2006-16

Dear Mr. Davis:

I fully support the proposed amendments of Rules 6.302 and 6.310, that eliminate the participation of the court in plea negotiations, but not for the reason stated in the staff comment. We needn't care if state rules parrot their federal counterparts, but we should be very concerned about improving the perception and reality of judicial neutrality, diminished by our current rules and practice.

In my other lives as a prosecutor and criminal defense lawyer, I always resented the practice of some judges, who insisted on conducting a meeting in chambers with counsel *to discuss the case*. Lawyers were expected to reveal the status of plea negotiations, and then show great deference to the judge's wisdom as he or she thumbed through the court file, asked a couple of questions and told us what our case was really about. Couched in artful language, the end result was predicted, without suffering the inconvenience of a trial.

As a judge, I have avoided this practice. Judges who claim that this device does not compromise their neutrality should ask themselves why these discussions take place off the record and outside the presence of the defendant. If it is helpful for the lawyers to know how the case has been prejudged, it should be even more effective to tell the defendant directly. If this practice has a benign effect on the trial process, trial judges shouldn't fear the creation of a record allowing appellate review of their involvement.

Settlement is facilitated by eliminating as many unknowns as possible and sentence bargaining by the lawyers is helpful and appropriate. The proposed rule changes fairly balance this need with the greater good of maintaining judicial impartiality.

Very truly yours,

Hon. David A. Hogg
Chief Judge, 84th District Court

